

## § 16.2

designed to provide a fair, impartial, quick and flexible process for appeal from written final decisions. This part supplements the provisions in part 74 of this title.

### § 16.2 Definitions.

(a) *Board* means the Departmental Grant Appeals Board of the Department of Health and Human Services. Reference below to an action of *the Board* means an action of the Chair, another Board member, or Board staff acting at the direction of a Board member. In certain instances, the provisions restrict action to particular Board personnel, such as the Chair or a Board member assigned to a case.

(b) Other terms shall have the meaning set forth in part 74 of this title, unless the context below otherwise requires.

### § 16.3 When these procedures become available.

Before the Board will take an appeal, three circumstances must be present:

(a) The dispute must arise under a program which uses the Board for dispute resolution, and must meet any special conditions established for that program. An explanation is contained in appendix A.

(b) The appellant must have received a final written decision, and must appeal that decision within 30 days after receiving it. Details of how final decisions are developed and issued, and what must be in them, are contained in 45 CFR 74.304.

(c) The appellant must have exhausted any preliminary appeal process required by regulation. For example, see 42 CFR part 50 (subpart D) for Public Health Service programs. In such cases, the *final written decision* required for the Board's review is the decision resulting from the preliminary review or appeal process. appendix A contains further details.

[46 FR 43817, Aug. 31, 1981, as amended at 62 FR 38218, July 17, 1997]

### § 16.4 Summary of procedures below.

The Board's basic process is review of a written record (which both parties are given ample opportunity to develop), consisting of relevant documents and statements submitted by

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both parties (see § 16.8). In addition, the Board may hold an informal conference (see § 16.10). The informal conference primarily involves questioning of the participants by a presiding Board member. Conferences may be conducted by telephone conference call. The written record review also may be supplemented by a hearing involving an opportunity for examining evidence and witnesses, cross-examination, and oral argument (see § 16.11). A hearing is more expensive and time-consuming than a determination on the written record alone or with an informal conference. Generally, therefore, the Board will schedule a hearing only if the Board determines that there are complex issues or material facts in dispute, or that the Board's review would otherwise be significantly enhanced by a hearing. Where the amount in dispute is \$25,000 or less, there are special expedited procedures (see § 16.12 of this part). In all cases, the Board has the flexibility to modify procedures to ensure fairness, to avoid delay, and to accommodate the peculiar needs of a given case. The Board makes maximum feasible use of preliminary informal steps to refine issues and to encourage resolution by the parties. The Board also has the capability to provide mediation services (see § 16.18).

### § 16.5 How the Board operates.

(a) The Board's professional staff consists of a Chair (who is also a Board member) and full- and part-time Board members, all appointed by the Secretary; and a staff of employees and consultants who are attorneys or persons from other relevant disciplines, such as accounting.

(b) The Chair will assign a Board member to have lead responsibility for each case (the "presiding Board member"). The presiding Board member will conduct the conference or hearing, if one is held. Each decision of the Board is issued by the presiding Board member and two other Board members.

(c) The Board staff assists the presiding Board member, and may request information from the parties; conduct telephone conference calls to request information, to clarify issues, or to